

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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VIRGINIA ROSARIO, :  
 :  
 Plaintiff, : 06 Civ. 7197 (PAC) (GWG)  
 :  
 - against - : OPINION & ORDER  
 :  
 NEW YORK CITY DEPARTMENT OF :  
 HOMELESS SERVICES, :  
 :  
 Defendant. :  
 :  
 ----- x

HONORABLE PAUL A. CROTTY, United States District Judge:

Virginia Rosario brings this action, pro se, pursuant to Title VII of the Civil Rights Act (“Title VII”), 42 U.S.C. §§ 2000e-2000e17, and the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §§ 621-634, seeking relief for allegedly discriminatory actions taken against her by her former supervisor at the New York City Department of Homeless Services (“DHS”). Rosario alleges discrimination on the basis of race, color, and age, and contends that her supervisor retaliated against her for filing an internal complaint. DHS moved to dismiss the complaint.

This case was referred to United States Magistrate Judge Gabriel W. Gorenstein, who issued his Report and Recommendation (“R & R”) on February 19, 2008. Magistrate Judge Gorenstein recommended that DHS’s motion be granted in part, and denied in part. The Magistrate Judge provided ten days for written objections, pursuant to Federal Rule of Civil Procedure 72(b), and specifically advised that “[i]f a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal.” (R & R 16). No objections have been filed.

## **DISCUSSION**

“To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citation and quotation marks omitted). The Court finds no clear error on the face of this record and agrees with Magistrate Judge Gorenstein’s recommendations. The Court holds that: (1) Rosario’s ADEA claim is dismissed for failure to exhaust her administrative remedies (R & R 7); (2) any discriminatory actions that occurred prior to May 8, 2001 are time-barred (R & R 8-9); (3) Rosario’s allegations regarding lateness, verbal abuse, deprivation of cleaning services, and use of the Spanish language, are dismissed for the reasons stated in the R & R (R & R 9-13); and (4) Rosario’s allegations regarding overtime, duties, leave requests, scrutiny, and retaliation, survive this motion (R & R 11-15). In addition, as set forth in the R & R, Rosario is granted leave to amend her complaint to cure any deficiencies in the allegations which have been dismissed as a result of this order (R & R 16). Accordingly, the Court accepts and adopts the Report and Recommendation as its opinion.

## **CONCLUSION**

DHS’s motion is GRANTED in part, and DENIED in part, as set forth in the R & R. The Order of Reference to Magistrate Judge Gorenstein continues for further disposition of this matter. The Clerk of Court is directed to terminate the pending motion to dismiss.

Dated: New York, New York  
March 19, 2008

SO ORDERED

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PAUL A. CROTTY  
United States District Judge

Copies sent to:

Virginia Rosario  
266 East Broadway #B1005  
New York, NY 10022

Mario Frangiose  
Sherri Renee Rosenberg  
Office of Corporation Counsel  
City of New York  
100 Church St.  
New York, NY 10007

Magistrate Judge Gabriel W. Gorenstein  
United States Magistrate Judge

## DISCUSSION

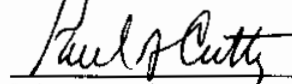
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PAUL A. CROTTY  
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